

TERRY T. JOHNSON, State Bar No. 121569 (tjohnson@wsgr.com)
BORIS FELDMAN, State Bar No. 128838 (boris.feldman@wsgr.com)
BAHRAM SEYEDIN-NOOR, State Bar No. 203244 (bnoor@wsgr.com)
WILSON SONSINI GOODRICH & ROSATI
650 Page Mill Road
Palo Alto, CA 94304-1050
Telephone: (650) 493-9300
Facsimile: (650) 565-5100

Attorneys for Defendants

COUGHLIN STOIA GELLER
RUDMAN & ROBBINS LLP
CHRISTOPHER P. SEEFER, State Bar No. 201197 (cseef@csgr.com)
SHIRLEY H. HUANG, State Bar No. 206854 (shuang@csgr.com)
100 Pine Street, Suite 2600
San Francisco, CA 94111
Telephone: (415) 288-4545
Facsimile: (415) 288-4534

Attorneys for Lead Plaintiffs

[Additional counsel and parties listed on signature page]

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

IN RE UTSTARCOM, INC.
SECURITIES LITIGATION

Master File No. C-04-4908-JW(PVT)

~~PROPOSED~~ STIPULATED
PROTECTIVE ORDER

This Document Relates to:

ALL ACTIONS.

PROTECTIVE ORDER

1. PURPOSES AND LIMITATIONS

Disclosure and discovery activity in this action are likely to involve production of confidential, proprietary, or private information for which special protection from public disclosure and from use for any purpose other than this litigation would be warranted.

Accordingly, the parties hereby stipulate to and petition the Court to enter the following Stipulated Protective Order. The Parties acknowledge that this Order does not confer blanket protections on all disclosures or responses to discovery and that the protection it affords extends only to the limited information or items that are entitled under the applicable legal principles to treatment as confidential. The parties further acknowledge, as set forth in Section 10, below, that this Stipulated Protective Order creates no entitlement to file confidential information under seal; Civil Local Rule 79-5 sets forth the procedures that must be followed and reflects the standards that will be applied when a party seeks permission from the court to file material under seal.

2. DEFINITIONS

2.1 Party: any party to this action, including all of its officers, directors, employees, consultants, retained experts, and outside counsel (and their support staff).

2.2 Disclosure or Discovery Material: all items or information, regardless of the medium or manner generated, stored, or maintained (including, among other things, testimony, transcripts, or tangible things) that are produced or generated in disclosures or responses to discovery in this matter.

2.3 "Confidential" Information or Items: information (regardless of how generated, stored or maintained) or tangible things that qualify for protection under standards developed under Fed.R.Civ.P. 26(c).

2.4 "Highly Confidential – Attorneys' Eyes Only" Information or Items: extremely sensitive "Confidential" Information or Items whose disclosure to another Party or non-party would create a substantial risk of serious injury that could not be avoided by less restrictive means.

2.5 Receiving Party: a Party that receives Disclosure or Discovery Material from a Producing Party.

2.6 Producing Party: a Party or non-party that produces Disclosure or Discovery Material in this action.

2.7 Designating Party: a Party or non-party that designates information or items that it produces in disclosures or in responses to discovery as “Confidential” or “Highly Confidential – Attorneys’ Eyes Only.”

2.8 Protected Material: any Disclosure or Discovery Material that is designated as “Confidential” or as “Highly Confidential – Attorneys’ Eyes Only.”

2.9 Outside Counsel: attorneys who are not employees of a Party but who are retained to represent or advise a Party in this action.

2.10 House Counsel: attorneys who are employees of a Party.

2.11 Counsel (without qualifier): Outside Counsel and House Counsel (as well as their support staffs).

2.12 Expert: a person with specialized knowledge or experience in a matter pertinent to the litigation who has been retained by a Party or its counsel to serve as an expert witness or as a consultant in this action and who is not a past or a current employee of a Party or of a competitor of a Party’s and who, at the time of retention, is not anticipated to become an employee of a Party or a competitor of a Party’s. This definition includes a professional jury or trial consultant retained in connection with this litigation.

2.13 Professional Vendors: persons or entities that provide litigation support services (e.g., photocopying; videotaping; translating; preparing exhibits or demonstrations; organizing, storing, retrieving data in any form or medium; etc.) and their employees and subcontractors.

3. SCOPE

The protections conferred by this Stipulation and Order cover not only Protected Material (as defined above), but also any information copied or extracted there from, as well as all copies,

1 excerpts, summaries, or compilations thereof, plus testimony, conversations, or presentations by
 2 parties or counsel to or in court or in other settings that might reveal Protected Material.

3 4. DURATION

4 Even after the termination of this litigation, the confidentiality obligations imposed by this
 5 Order shall remain in effect until a Designating Party agrees otherwise in writing or a court order
 6 otherwise directs.

7 5. DESIGNATING PROTECTED MATERIAL

8 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each
 9 Party or non-party that designates information or items for protection under this Order must take
 10 care to limit any such designation to specific material that qualifies under the appropriate
 11 standards. A Designating Party must take care to designate for protection only those parts of
 12 material, documents, items, or oral or written communications that qualify – so that other portions
 13 of the material, documents, items, or communications for which protection is not warranted are
 14 not swept unjustifiably within the ambit of this Order.

15 Mass, indiscriminate, or routinized designations are prohibited. Designations that
 16 are shown to be clearly unjustified, or that have been made for an improper purpose (e.g., to
 17 unnecessarily encumber or retard the case development process, or to impose unnecessary
 18 expenses and burdens on other parties), expose the Designating Party to sanctions.

19 If it comes to a Party's or a non-party's attention that information or items that it
 20 designated for protection do not qualify for protection at all, or do not qualify for the level of
 21 protection initially asserted, that Party or non-party must promptly notify all other parties that it is
 22 withdrawing the mistaken designation.

23 5.2 Manner and Timing of Designations. Except as otherwise provided in this
 24 Order (see, e.g., second paragraph of Section 5.2(a), below), or as otherwise stipulated or ordered,
 25 material that qualifies for protection under this Order must be clearly so designated before the
 26 material is disclosed or produced.

27 Designation in conformity with this Order requires:
 28

(a) for information in documentary form (apart from transcripts of depositions or other pretrial or trial proceedings), that the Producing Party affix the legend “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” on each page that contains protected material. If only a portion or portions of the material on a page qualifies for protection, the Producing Party also must clearly identify the protected portion(s) (e.g., by making appropriate markings in the margins) and must specify, for each portion, the level of protection being asserted (either “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”).

A Party or non-party that makes original documents or materials available for inspection need not designate them for protection until after the inspecting Party has indicated which material it would like copied and produced. During the inspection and before the designation, all of the material made available for inspection shall be deemed “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” After the inspecting Party has identified the documents it wants copied and produced, the Producing Party must determine which documents, or portions thereof, qualify for protection under this Order, then, before producing the specified documents, the Producing Party must affix the appropriate legend (“CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”) on each page that contains Protected Material. If only a portion or portions of the material on a page qualifies for protection, the Producing Party also must clearly identify the protected portion(s) (e.g., by making appropriate markings in the margins) and must specify, for each portion, the level of protection being asserted (either “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”).

(b) for testimony given in deposition or in other pretrial or trial proceedings, that the Party or non-party offering or sponsoring the testimony identify on the record, before the close of the deposition, hearing, or other proceeding, all protected testimony, and further specify any portions of the testimony that qualify as “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” When it is impractical to identify separately each portion of testimony that is entitled to protection, and when it appears that substantial portions of the testimony may qualify for protection, the Party or non-party that sponsors, offers, or gives the

1 testimony may invoke on the record (before the deposition or proceeding is concluded) a right to
 2 have up to 20 days to identify the specific portions of the testimony as to which protection is
 3 sought and to specify the level of protection being asserted (“CONFIDENTIAL” or “HIGHLY
 4 CONFIDENTIAL – ATTORNEYS’ EYES ONLY”). Only those portions of the testimony that
 5 are appropriately designated for protection within the 20
 6 days shall be covered by the provisions of this Stipulated Protective Order.

7 Transcript pages containing Protected Material must be separately bound by
 8 the court reporter, who must affix to the top of each such page the legend “CONFIDENTIAL” or
 9 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” as instructed by the Party or non-
 10 party offering or sponsoring the witness or presenting the testimony.

11 (c) for information produced in some form other than documentary, and
 12 for any other tangible items, that the Producing Party affix in a prominent place on the exterior of
 13 the container or containers in which the information or item is stored the legend
 14 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” If only
 15 portions of the information or item warrant protection, the Producing Party, to the extent
 16 practicable, shall identify the protected portions, specifying whether they qualify as
 17 “CONFIDENTIAL” or as “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

18 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure
 19 to designate qualified information or items as “CONFIDENTIAL” or “HIGHLY
 20 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” does not, standing alone, waive the
 21 Designating Party’s right to secure protection under this Order for such material. If material is
 22 appropriately designated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –
 23 ATTORNEYS’ EYES ONLY” after the material was initially produced, the Receiving Party, on
 24 timely notification of the designation, must make reasonable efforts to assure that the material is
 25 treated in accordance with the provisions of this Order.

26 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

27 6.1 Timing of Challenges. Unless a prompt challenge to a Designating Party’s
 28 confidentiality designation is necessary to avoid foreseeable substantial unfairness, unnecessary

1 economic burdens, or a later significant disruption or delay of the litigation, a Party does not
2 waive its right to challenge a confidentiality designation by electing not to mount a challenge
3 promptly after the original designation is disclosed.

4 6.2 Meet and Confer. A Party that elects to initiate a challenge to a Designating
5 Party's confidentiality designation must do so in good faith and must begin the process by
6 conferring directly (in voice-to-voice dialogue; other forms of communication are not sufficient)
7 with counsel for the Designating Party. In conferring, the challenging Party must explain the basis
8 for its belief that the confidentiality designation was not proper and must give the Designating
9 Party an opportunity to review the designated material, to reconsider the circumstances, and, if no
10 change in designation is offered, to explain the basis for the chosen designation. A challenging
11 Party may proceed to the next stage of the challenge process only if it has engaged in this meet
12 and confer process first.

13 6.3 Judicial Intervention. A Party that elects to press a challenge to a
14 confidentiality designation, after considering the justification offered by the Designating Party,
15 may file and serve a motion under Civil Local Rule 7 (and in compliance with Civil Local Rule
16 79-5, if applicable) that identifies the challenged material and sets forth in detail the basis for the
17 challenge. Each such motion must be accompanied by a competent declaration that affirms that
18 the movant has complied with the meet and confer requirements imposed in the preceding
19 paragraph and that sets forth with specificity the justification for the confidentiality designation
20 that was given by the Designating Party in the meet and confer dialogue.

21 The burden of persuasion in any such challenge proceeding shall be on the
22 Designating Party. Until the Court rules on the challenge, all parties shall continue to afford the
23 material in question the level of protection to which it is entitled under the Producing Party's
24 designation.

25 7. ACCESS TO AND USE OF PROTECTED MATERIAL

26 7.1 Basic Principles. A Receiving Party may use Protected Material that is
27 disclosed or produced by another Party or by a non-party in connection with this case only for
28 prosecuting, defending, or attempting to settle this litigation. Such Protected Material may be

disclosed only to the categories of persons and under the conditions described in this Order. When the litigation has been terminated, a Receiving Party must comply with the provisions of Section 11 (FINAL DISPOSITION), below.

Protected Material must be stored and maintained by a Receiving Party at a location and in a secure manner that ensures that access is limited to the persons authorized under this Order.

7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise ordered by the Court or permitted in writing by the Designating Party, a Receiving Party may disclose any information or item designated CONFIDENTIAL only to:

(a) the Receiving Party’s Outside Counsel of record in this action which has signed the “Agreement to Be Bound by Protective Order” that is attached hereto as Exhibit A, as well as employees and professional vendors of said Counsel to whom it is reasonably necessary to disclose the information for this litigation;

(b) the officers, directors, and employees (including House Counsel) of the Receiving Party to whom disclosure is reasonably necessary for this litigation and who have signed the “Agreement to Be Bound by Protective Order” (Exhibit A);

(c) experts (as defined in this Order) of the Receiving Party to whom disclosure is reasonably necessary for this litigation and who have signed the “Agreement to Be Bound by Protective Order” (Exhibit A);

(d) the Court and its personnel;

(e) court reporters and their staffs to whom disclosure is reasonably necessary for this litigation and who have signed the “Agreement to Be Bound by Protective Order” (Exhibit A);

(f) during their depositions, witnesses in the action to whom disclosure is reasonably necessary and who have signed the “Agreement to Be Bound by Protective Order” (Exhibit A). Pages of transcribed deposition testimony or exhibits to depositions that reveal Protected Material must be separately bound by the court reporter and may not be disclosed to anyone except as permitted under this Stipulated Protective Order; and

(g) the author of the document or the original source of the information..

7.3 Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES

ONLY” Information or Items. Unless otherwise ordered by the court or permitted in writing by the Designating Party, a Receiving Party may disclose any information or item designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” only to:

(a) the Receiving Party’s Outside Counsel of record in this action which has signed the “Agreement to Be Bound by Protective Order” that is attached hereto as Exhibit A, as well as employees and professional vendors of said Counsel to whom it is reasonably necessary to disclose the information for this litigation;

(b) Experts (as defined in this Order) to whom disclosure is reasonably necessary for this litigation and who have signed the “Agreement to Be Bound by Protective Order” (Exhibit A);

(c) the Court and its personnel;

(d) court reporters and their staffs to whom disclosure is reasonably necessary for this litigation and who have signed the “Agreement to Be Bound by Protective Order” (Exhibit A); and

(e) the author of the document or the original source of the information.

8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER LITIGATION

If a Receiving Party is served with a subpoena or an order issued in other litigation that would compel disclosure of any information or items designated in this action as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” the Receiving Party must so notify the Designating Party, in writing (by e-mail or fax, if possible) immediately and in no event more than three court days after receiving the subpoena or order. Such notification must include a copy of the subpoena or court order.

The Receiving Party also must immediately inform in writing the Party who caused the subpoena or order to issue in the other litigation that some or all the material covered by the subpoena or order is the subject of this Protective Order. In addition, the Receiving Party must

1 deliver a copy of this Stipulated Protective Order promptly to the Party in the other action that
2 caused the subpoena or order to issue.

3 The purpose of imposing these duties is to alert the interested parties to the existence of
4 this Protective Order and to afford the Designating Party in this case an opportunity to try to
5 protect its confidentiality interests in the court from which the subpoena or order issued. The
6 Designating Party shall bear the burdens and the expenses of seeking protection in that court of its
7 confidential material – and nothing in these provisions should be construed as authorizing or
8 encouraging a Receiving Party in this action to disobey a lawful directive from another court.

9 9. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

10 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected
11 Material to any person or in any circumstance not authorized under this Stipulated Protective
12 Order, the Receiving Party must immediately: (a) notify in writing the Designating Party of the
13 unauthorized disclosures; (b) use its best efforts to retrieve all copies of the Protected Material; (c)
14 inform the person or persons to whom unauthorized disclosures were made of all the terms of this
15 Order; and (d) request such person or persons to execute the “Acknowledgment and Agreement to
16 Be Bound” that is attached hereto as Exhibit A.

17 10. FILING PROTECTED MATERIAL

18 Without written permission from the Designating Party or a court order secured after
19 appropriate notice to all interested persons, a Party may not file in the public record in this action
20 any Protected Material. A Party that seeks to file under seal any Protected Material must comply
21 with Civil Local Rule 79-5.

22 11. FINAL DISPOSITION

23 Unless otherwise ordered or agreed in writing by the Producing Party, within sixty days
24 after the final termination of this action, each Receiving Party must either destroy or return all
25 Protected Material to the Producing Party. As used in this subdivision, “all Protected Material”
26 includes all copies, abstracts, compilations, summaries or any other form of reproducing or
27 capturing any of the Protected Material. Whether the Protected Material is returned or destroyed,
28 the Receiving Party must submit a written certification to the Producing Party (and, if not the same

1 person or entity, to the Designating Party) by the sixty day deadline that identifies (by category,
 2 where appropriate) all the Protected Material that was returned or destroyed and that affirms that
 3 the Receiving Party has not retained any copies, abstracts, compilations, summaries or other forms
 4 of reproducing or capturing any of the Protected Material. Notwithstanding this provision,
 5 Counsel are entitled to retain an archival copy of all pleadings, motion papers, transcripts, legal
 6 memoranda, correspondence or attorney work product, even if such materials contain Protected
 7 Material. Any such archival copies that contain or constitute Protected Material remain subject to
 8 this Protective Order as set forth in Section 4 (DURATION), above.

9 12. INADVERTENT PRODUCTION OF PRIVILEGED MATERIAL

10 Each party shall make efforts that are “reasonably designed” to protect its
 11 privileged materials. *See Gomez v. Vernon*, 255 F.3d 1118, 1131-32 (9th Cir. 2001). What
 12 constitutes efforts that are reasonably designed to protect privileged materials depends on the
 13 circumstances; the law does not require “strenuous or Herculean efforts,” just “reasonable efforts.”
 14 *See, e.g., Hynix Semiconductor, Inc. v. Rambus, Inc.* 2008 WL 350641, *1–*2 (ND Cal., Feb. 2,
 15 2008); *see also*, FED.R.CIV.PRO. 26(f)(3) advisory committee’s notes to 2006 amendments
 16 (discussing the substantial costs and delays that can result from attempts to avoid waiving
 17 privilege, particularly when discovery of electronic information is involved). When a particular
 18 Rule 34 request requires a production or inspection that is too voluminous, expedited or
 19 complex (such as certain electronic productions) to allow for an adequate preproduction
 20 review, the parties may enter into non-waiver agreements for that particular production. If the
 21 requesting party is unwilling to enter into such an agreement, the Producing Party may move the
 22 court for a non-waiver order.

23 In the event that, despite reasonable efforts, a Producing Party discovers it has
 24 inadvertently produced privileged materials, then within 30 calendar days the Producing Party
 25 shall notify the Receiving Party that the document(s) or materials should have been withheld on
 26 grounds of privilege. After the Receiving Party receives this notice from the Producing Party
 27 under this paragraph, the Receiving Party shall not disclose or release the inadvertently produced
 28 material to any person or entity pending resolution of the Producing Party’s claim of privilege.

1 The parties shall hold a meet and confer, as defined in Civil Local Rule 1-5(n), as soon as
 2 reasonably possible after a notice of inadvertent production. If the Producing Party and Receiving
 3 Party agree that the inadvertently produced material is privileged, and was disclosed despite
 4 efforts by the Producing Party that were 'reasonably designed' to protect the materials, then the
 5 Receiving Party shall return or certify the destruction of all copies (including summaries) of such
 6 material. If no agreement is reached, then within 10 court days after the meet and confer, the
 7 Producing Party must seek a ruling from this court to establish that the material is privileged and
 8 that the Producing Party did not waive the privilege by inadvertently producing the material. If
 9 the Producing Party seeks such a ruling, the Receiving Party shall not disclose or release the
 10 inadvertently produced material to any person or entity pending the court's ruling on the
 11 Producing Party's motion.

12 13. MISCELLANEOUS

13 13.1 Right to Further Relief. Nothing in this Order abridges the right of any
 14 person to seek its modification by the Court in the future.

15 13.2 Right to Assert Other Objections. By stipulating to the entry of this
 16 Protective Order no Party waives any right it otherwise would have to object to disclosing or
 17 producing any information or item on any ground not addressed in this Stipulated Protective
 18 Order. Similarly, no Party waives any right to object on any ground to the use in evidence of any
 19 of the material covered by this Protective Order.
 20

21 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

22 Dated: May 12, 2009

Respectfully Submitted,

23 WILSON SONSINI GOODRICH & ROSATI
 24 Professional Corporation

25 By: /s/ BAHRAM SEYEDIN-NOOR
 26 BAHRAM SEYEDIN-NOOR

27 Attorneys for Defendants
 28 UTSTARCOM, INC., HONG LIANG LU,
 MICHAEL J. SOPHIE, YING WU, THOMAS
 J. TOY

1 Dated: May 12, 2009

SULLIVAN & CROMWELL LLP

2
3 By: /s/ JASON DE BRETTEVILLE
JASON DE BRETTEVILLE

4 Attorneys for Defendants
5 SOFTBANK HOLDINGS, INC.
6 SOFTBANK AMERICA, INC. AND
7 SOFTBANK CORPORATION

8 Dated: May 12, 2009

COUGHLIN STOIA GELLER RUDMAN &
ROBBINS LLP

9
10 By: /s/ CHRIS SEEFER
CHRIS SEEFER

11 Attorneys for Plaintiffs
12

13
14 PURSUANT TO STIPULATION, IT IS SO ORDERED.

15
16 DATED: 5/12/09


The Honorable Patricia V. Trumbull
United States Magistrate Judge

EXHIBIT A

ACKNOWLEDGEMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of _____
[print or type full address], declare under penalty of perjury that I have read in its entirety and understand the Stipulated Protective Order that was issued by the United States District Court for the Northern District of California on _____, 2009 in the case of *In re UTStarcom, Inc. Securities Litigation*, Case No. C-04-4908-JW(PVT). I agree to comply with and to be bound by all the terms of this Stipulated Protective Order and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner any information or item that is subject to this Stipulated Protective Order to any person or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the Northern District of California for the purpose of enforcing the terms of this Stipulated Protective Order, even if such enforcement proceedings occur after termination of this action.

I hereby appoint _____ [print or type full name] of _____ [print or type full address and telephone number] as my California agent for service of process in connection with this action or any proceedings related to enforcement of this Stipulated Protective Order.

Date: _____

City and State where sworn and signed: _____

Printed name _____
[printed name]

Signature: _____
[signature]